Brotherhood of Railway, Airline, and Steamship Clerks, System Board No. 94 *and* Pacific Motor Trucking Company and International Association of Machinists and Aerospace Workers, AFL-CIO and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 36-CD-164

June 30, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Pacific Motor Trucking Company, herein called the Employer, alleging that the Brotherhood of Railway, Airline, and Steamship Clerks, System Board No. 94, herein called BRAC, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with the object of forcing or requiring the Employer to assign certain work to employees it represented rather than to employees represented by the International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Machinists, or the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters.

Pursuant to notice, a hearing was held before Hearing Officer Sharon A. Larson on February 19 and 20, 1981. All parties appeared and were afforded an opportunity to be heard, to examine and cross-examine witnesses, and to present evidence bearing on the issues.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are therefore affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer is a California corporation engaged in business as a truck common carrier, performing services in the States of Arizona, California, Nevada, Oregon, Texas, and Washington, with its principal place of business in Burlingame, California. The parties further stipulated, and we find, that during the past calendar year the Employer derived gross revenue in excess of $50,000 from interstate commerce. We find, in accordance with the foregoing, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that BRAC, the Machinists, and the Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The disputed work concerns the operation of cathode ray tube computer terminals (herein called CRTs) in the truck repair and maintenance shops operated by the Employer in its Portland, Oregon, facility.[1] Since their installation in 1979, the Employer has assigned the work of operating the CRTs to members of Local 255, Teamsters and District Lodge No. 24, Machinists.

The Employer installed the CRTs in 1979 in order to facilitate the keeping of records regarding truck maintenance, parts, and fuel. Prior to the installation of the CRTs, employees represented by the Teamsters, which represents the Employer's parts department employees, had maintained the records regarding parts and fuel; employees represented by the Machinists, which represents the Employer's mechanics, had maintained the records regarding maintenance work orders. These employees now enter information, which they had previously recorded by hand on various business forms, directly into the CRT.

The Employer also employs employees represented by BRAC, who handle clerical duties in an office separated from the repair shop. On or about April 16, 1980, BRAC submitted a grievance to the Employer, claiming that the assignment of employees represented by the Teamsters and the Machinists to the operation of the CRTs constituted a violation of the collective-bargaining agreement between the Employer and BRAC. This grievance was eventually submitted to arbitration before a neutral arbitrator.

In September 1980, the arbitrator ruled that the assignment of the CRT operation to employees represented by the Machinists and the Teamsters violated the BRAC collective-bargaining agreement. The arbitrator stated, however, that should either the Machinists or the Teamsters object to the assignment of the CRT work to employees represented by BRAC, the Employer should maintain

[1] The Employer, the Machinists, and the Teamsters have requested that the Board issue a broad award in this case, covering all present and future jurisdictional disputes involving the use of CRTs and other computers at all facilities operated by Pacific Motor Trucking Company. After careful consideration of this request, we find that the record does not permit an award broader than the dispute at the Employer's facility at Portland, Oregon. Accordingly, this Decision and Determination of Dispute covers only the work in dispute at that facility.

the status quo until the jurisdictional dispute is resolved.

Both the Machinists and the Teamsters claimed that the employees they represented continued to be entitled to operate the CRTs and the Employer refused to assign the work to BRAC. On or about February 3, 1981, Stan Stevens, senior vice general chairman of BRAC, informed the Employer that BRAC would picket the Employer's Portland facility unless the employees it represented were assigned to operate the CRTs. Stevens repeated his threat later the same day.

B. *The Work in Dispute*

The work in dispute involves the operation of cathode ray tube computer terminals (CRTs) for the keeping and retrieval of records regarding parts, fuel, and maintenance work orders in the Employer's repair shop at its Portland, Oregon, facility.

C. *The Contentions of the Parties*

The Employer, the Machinists, and the Teamsters contend that the disputed work should be awarded to employees represented by the Machinists and Teamsters who are currently operating the CRTs. BRAC, which did not file a brief with the Board, contended at the 10(k) hearing that its members are entitled to the CRT work. The Employer, the Machinists, and the Teamsters base their claims on the skills of the Machinists and Teamsters, employer preference and past practice, industry practice, and the efficiency, economy, and flexibility of the Employer's operations. They also argue that because the CRTs have been operated since their installation by employees represented by the Machinists and the Teamsters, and because the CRT work replaced manual recordkeeping which had previously been done by employees represented by Machinists and Teamsters, no employee respresented by BRAC has been displaced.

BRAC bases its claim for the CRT work on the language of its collective-bargaining agreement with the Employer and upon the arbitrator's interpretation of that agreement. BRAC also asserts that the employees it represents possess the necessary skills to operate the CRTs.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

The record establishes that BRAC has continuously asserted a claim to the work in dispute since April 1980. BRAC admits that it threatened to strike to force the Employer to assign the CRT work to employees it represented.[2] Furthermore, the parties stipulated at the hearing that they had been unable to agree upon a method for the voluntary adjustment of the work dispute.[3] Accordingly, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that this dispute is properly before the Board for determination.

E. *The Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to relevant factors.[4] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience reached by balancing those factors involved in a particular case.[5]

The following factors are relevant in making the determination of the dispute presently before us:

1. Collective-bargaining agreements and the arbitration award

BRAC claims the disputed work primarily on the basis of Rule 1(a) of its collective-bargaining agreement, entered into in 1976, between BRAC and the Employer. Under the terms of this agreement, members of BRAC are accorded the right to "exclusive operation" of "any electronic or mechanical computer systems or devices for the transmission or receipt of data at terminals operated" by the Employer.

However, the collective-bargaining agreement between the Employer and the Teamsters states, in relevant part, that the agreement shall cover "all . . . activity as may be presently and hereinafter

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[2] The Employer contends that BRAC threatened to strike Pacific Motor Trucking Company and Southern Pacific Transportation Company, which owns Pacific Motor, "where it would hurt the most," and that this statement implied that BRAC threatened a systemwide strike. BRAC contends that it threatened to strike only at the Employer's facility at Portland, Oregon. Since our Decision and Determination of Dispute covers only the Portland, Oregon, facility, we need not determine the extent of BRAC's strike threat. BRAC's admitted threat to strike at Portland is sufficient to provide reasonable cause to believe that a violation of Sec. 8(b)(4)(D) has occurred and to bring this dispute before the Board for determination.

[3] As neither the Machinists nor the Teamsters was a participant in the aforementioned arbitration award, the arbitration award could not serve as a means for the voluntary adjustment of this dispute. *Hutchinson Printing Pressmen and Assistants' Union, No. 275 (Hutchinson Publishing Company)*, 205 NLRB 582 (1973).

[4] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [*Columbia Broadcasting System*], 364 U.S. 573 (1961).

[5] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Co.)*, 135 NLRB 1402 (1962).

engaged in by the Employer in . . . truck servicing and repairing . . . ." Additionally, the collective-bargaining agreement between the Employer and the Machinists provides, in pertinent part, that the Machinists has jurisdiction "over all of the following types of work in the Employer's shops: Maintenance, body and fender work, rebuilding, dismantling, assembling, repairing, installing, erecting, welding and burning . . . inspecting, diagnosing, cleansing, preparing or conditioning of all units and auxiliaries . . . relating to passenger cars . . . trucks and all other types of powered machinery."

The Machinists and Teamsters contend that their collective-bargaining agreements give them jurisdiction over CRT work done in connection with their respective trades; BRAC maintains that its collective-bargaining agreement gives its members jurisdiction over all CRT work done in the Employer's shop. After careful consideration of these claims, we conclude that the contract of each party tends to support its respective claim to the disputed work and, therefore, that our award in this matter must be based on other considerations.

BRAC also argues that the Board should give weight to the fact that the employees it represents were awarded the disputed work by a neutral arbitrator. However, the arbitration award was based solely on the language of the BRAC collective-bargaining agreement. In addition, neither the Machinists nor the Teamsters participated in the arbitration and the award does not set forth and discuss the crucial issue of whether the factors supporting an award to the employees represented by BRAC outweighed those supporting an award to employees represented by the Machinists and the Teamsters. Accordingly, we find that the arbitration award is not entitled to significant weight.[6]

2. Employer and industry practice

Since its installation in 1979, the Employer has continuously and exclusively used employees who are represented by the Machinists and the Teamsters to perform the work in dispute. This factor weighs heavily in favor of awarding the work to those employees.[7]

The evidence regarding industry practice shows that at all other places where CRTs are in use the CRTs are operated by the employee who is engaged in the physical work to which the CRT recordkeeping is related or by his supervisor. In the instant case, the physical tasks connected to the CRT system are performed by employees represented by the Machinists or the Teamsters. Employer and industry practice, therefore, favors an award of the disputed work to those employees.

3. Relative skills, efficiency, and flexibility of operation

The evidence indicates that no special skills are required to operate the CRTs and that nearly anyone could learn to operate a CRT in a relatively short period of time. However, the evidence also establishes that the CRT System is an interactive system which requires the operator to respond to inquiries made by the computer and to make changes or corrections in the data. This system functions most efficiently when the operator is familiar with the nature of the data which he or she enters into the terminal. Moreover, direct use of the CRT by the Employer's mechanics, represented by the Machinists, and partsmen, represented by the Teamsters, enhances the ability of these employees to locate parts and equipment quickly and efficiently, to determine which part or machine to use, and to record which parts and equipment have been used.

It is evident from the foregoing that the factors of skill, efficiency, and flexibility favor an award of the disputed work to employees represented by the Machinists and the Teamsters.

4. Job impact

The record reflects that the CRT system is basically a substitution for the recordkeeping which had previously been done manually by mechanics and partsmen. Under the CRT system, these employees continue to maintain essentially the same records as they had in the past, except that these records are now entered into a CRT computer terminal.

BRAC does not claim that any of the employees it represents have been laid off or that any position held by one of its members has been abolished as a result of the introduction of the CRT system and the assignment of the CRT work to employees represented by the Machinists and the Teamsters. Instead, BRAC claims that the assignment of the CRT work to these employees could, conceivably, lead to a loss of BRAC positions in the Employer's central office in Burlingame, California. This claim is purely speculative. Indeed, BRAC's counsel admitted at the hearing that he "couldn't honestly say that it would result in abolishment of an individual position."

Based on the foregoing, we conclude that assignment of the disputed work to employees represented by the Machinists and the Teamsters would not result in an adverse job impact on employees repre-

[6] *Nashua Printing Pressmen and Assistants' Union No. 359 (Telegraph Publishing Company)*, 212 NLRB 942, fn. 4 (1974).

[7] *Laborers' International Union of North America, Local 300, AFL-CIO (Howard Olson Landscaping, Inc.)*, 195 NLRB 247, 248 (1972).

sented by BRAC and that this factor does not favor an assignment to any particular employee.

5. Employer preference

The Employer's representatives testified that because of economy, efficiency, and flexibility it preferred its employees who are most familiar with the nature of the data to be entered into the CRT, and are engaged in the physical tasks which generate that data, to perform the disputed work. This factor weighs in favor of awarding the work to employees who are represented by the Machinists and the Teamsters.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors, we conclude that employees who are represented by the Machinists and the Teamsters, and who are currently operating the CRTs, are entitled to the work in dispute. We reach this conclusion on the basis of the Employer's and industry practice, relative skills, the efficiency and flexibility of the Employer's operation, and the Employer's preference. In making this determination, we are awarding the work in question to employees who are represented by the Machinists and the Teamsters, but not to those Unions or their members. The present determination covers the disputed work in the Employer's Portland, Oregon, facility, and is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

1. Employees employed by Pacific Motor Trucking Company who are represented by District Lodge No. 24, International Association of Machinists and Aerospace Workers, AFL-CIO, are entitled to perform the work in dispute which consists of the operation of cathode ray tube computer terminals in connection with their duties as mechanics in the Employer's Portland, Oregon, facility.

2. Employees employed by Pacific Motor Trucking Company who are represented by Local 255, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are entitled to perform the work in dispute which consists of the operation of cathode ray tube computer terminals in connection with their duties as partsmen in the Employer's Portland, Oregon, facility.

3. The Brotherhood of Railway, Airline, and Steamship Clerks, System Board No. 94, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Pacific Motor Trucking Company to assign the disputed work to employees represented by that labor organization.

4. Within 10 days from the date of this Decision and Determination of Dispute, the Brotherhood of Railway, Airline, and Steamship Clerks, System Board No. 94, shall notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in the manner inconsistent with the above determination.